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**Testimony of Whitney Lewendon
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**In Support of
Raised Bill No. 282
An Act Concerning the Return of a Gift
to a Person in Need of Long-Term Care Services**

**Aging Committee
March 6, 2012**

Good day members of the Aging Committee. I am Whitney M. Lewendon, a member of the Executive Committee of the Connecticut Bar Association Elder Law Section. I am testifying on behalf of the Section in support of Raised Bill No. 282, a proposal to allow the reduction of a penalty in the Medicaid program arising from a transfer of an asset when a portion of the asset previously given away has been returned. We propose one technical amendment that is set forth at the end of this written testimony.

This bill will restore a "partial return" practice Connecticut has followed in the Medicaid program for decades until last year when it was altered by Public Act 11-44, amending C.G. S. 17b-261a. As a result of that change, the length of a penalty in the Medicaid program cannot be reduced even if some of the assets that had been given away previously are returned.

Our over-arching concern is the fact that PA 11-44 acts as a strong disincentive for a person who has received a gift to return even a portion of it if the complete amount of the gift cannot be returned. We believe this means that there will be fewer private funds to pay for long term care services in a person's home or in a facility. A loss of private funds hurts every stakeholder in the system, the individual, the private provider and the State of Connecticut.

For example, if a grandfather had given two grandchildren \$10,000 each as a gift at any time during the last five years, and now becomes in need of long term care services, could he receive them by becoming eligible for Medicaid?

If one grandchild is able financially to give back the full amount of the gift he received from his grandfather, but the other cannot, then even if the first gives back \$10,000, under PA 11-44, the grandfather will still face a full penalty in the Medicaid program, meaning a denial of benefits for two months based on the total gift to both grandchildren.

What if one grandchild had some extra money to return to his grandfather, the gift he received plus an extra \$5,000? If the other grandchild cannot return the rest of gift that he had received, then even if the first returned \$15,000, the grandfather would still have a two-month Medicaid penalty.

I. The full return rule discourages the contribution of private funds to pay for long term care.

In our view, the application of PA 11-44 in these circumstances makes it obvious that the current law provides no incentive at all to any family members to return the gift when they no longer have all of it but could give back part. Returning all the money from one of the grandchildren but not all from the other grandchild does not change the fact that the grandfather will still have as long a penalty for Medicaid benefits as if nothing at all was returned. What good does it do to return less than the entire gift under this new full return requirement currently contained in PA 11-44?

By contrast, the prior rule which allowed adjustment of the length of a penalty if some of the funds were returned does create a true incentive that would lead people to return gifts, assuming some part of the gift was still available.

It would actually benefit the person who had given the money in the first place by shortening the penalty. It will also mean that the cost of care is covered by a combination of the private funds and Medicaid benefits that become available because the penalty has been shortened. By contrast, under the full return rule currently contained in PA 11-44, even when there is a partial return of a gift, the cost of care remains uncovered because the penalty has not been shortened.

This new rule under PA 11-44 has its harshest impact on individuals who hope to remain in their homes even though they are not well and to receive long term care services there through the Medicaid program. The full return rule means that those individuals will not receive the services at home they need during the length of the penalty. Putting individuals at home at that kind of risk means they will probably need care in a medical facility much sooner at a much higher cost than if they had been receiving services earlier.

II. The full return rule is not necessary to discourage gifts intentionally made to qualify for Medicaid.

PA 11 -44 introduced two new concepts to the Medicaid transfer of asset rules. The first is the full return discussed here. The second is quite separate from the first. The second concept allows DSS to deny Medicaid to individuals who intentionally gave away assets with the specific intention of receiving them back as a way to qualify immediately for Medicaid. The second part might be expected to affect the state's expenses in the Medicaid program because it results in the denial of Medicaid benefits for a significant period of time. Raised Bill 282 does not diminish the impact of the second part of last year's bill. Even if the former partial return rule is reinstated, DSS will still have the same ability to deny Medicaid benefits to individuals who give away assets with the intention of becoming immediately eligible for those benefits.

The only effect we anticipate if the partial return rule is reinstated is that there will be private funds replacing state funds to pay for some long term care services.

III. Rescinding only the full return rule is not anticipated to increase the state's costs, but continuing it may.

Because the current "full return" rule means that a partial return of a gift will not alter the length of the penalty, we do anticipate that the state will have increased costs in the administration of the Medicaid program. Individuals will be encouraged to produce evidence to demonstrate that prior gifts should not result in penalties. If Medicaid is denied on the basis of the gifts, then we can anticipate that individuals will request administrative fair hearings to review the denials. There will be as a result an increased burden on the state agency's eligibility staff and its fair hearings office that may result in longer delays in the processing of applications to final determinations.

The "full return" rule is not a tool that will discourage individuals from making gifts before applying for Medicaid. It applies to individuals such as the grandfather in our example who innocently attempted to help his grandchildren. Individuals like that grandfather in our example will continue to assist family members. Indeed, we generally acknowledge that it is a good thing for families to help one another. The full return rule runs completely contrary to that principle. A reinstatement of the "partial return" will encourage family integrity by restoring an incentive for individuals to help one another when able, including giving back gifts they had received previously when they can do so.

For all these reasons, we urge this Committee to approve an act concerning the return of a gift in the Medicaid program that will amend Connecticut General Statute Section 17b-261a.

IV. The definition of "institutionalized individual" should be extended to individuals applying for care at home.

We do request that the committee consider a technical amendment to the definition section in Section 1 of SB 282, subsection (d) (1). This section defines an "institutionalized individual" to whom the transfer of asset rules apply. Subdivision (C) of Subsection (d) (1) refers to individuals already receiving home and community based services. These are individuals who are living at home. The definition as to these individuals should be broadened to include not just individuals who are already receiving services at home, but those who are applying for them; so that Subdivision (C) should read as follows (the new proposed text is ***bold/italicized***):

"(C) ***applicants for or recipients of*** home and community based services under a Medicaid Waiver."

Thank you for your support of Senate Bill 282.

